



Office of the City Manager

ACTION CALENDAR  
February 11, 2014

To: Honorable Mayor and Members of the City Council  
From:  Christine Daniel, City Manager  
Submitted by: Mark Numainville, City Clerk  
Subject: Proposed Charter Amendment – Article V, Section 12 – Vacancy in the Office of Mayor or Councilmember and Tie Votes

RECOMMENDATION

Review the information provided by staff regarding Charter vacancy provisions and direct the City Manager to return with draft ballot measure language for the November 4, 2014 general election.

FISCAL IMPACTS OF RECOMMENDATION

Some monetary cost associated with placing a measure on the ballot, offset by potentially avoiding a costly special election in the future.

CURRENT SITUATION AND ITS EFFECTS

The current Charter provisions for vacancy in the office of Mayor or Councilmember are likely to result in a special election to fill the vacancy. The Charter only provides for appointment to fill a vacancy if there is less than one year remaining on the vacated term. Even in this instance, if the Council does not appoint within 60 days, then a special election must be called. In order to allow for proper notification, solicitation of applicants, and accounting for Council recess periods, a special election may be necessary even with less than one year remaining on the term. If there is more than one year remaining on the term, a special election must be called to fill the vacancy. A special election to fill such a vacancy would be very costly to City, likely exceeding \$300,000.

In addition to the complexity and cost of the current provisions, the deadlines to call the special election are inconsistent with current election practices and could result in additional costs if the City was precluded from consolidating the election and obtaining election services from the Registrar of Voters.

The proposed amendment also makes minor technical changes to the vacancy provisions for the Auditor and School Board to bring the term of office dates into compliance with other controlling sections of the Charter.

In addition to the provisions for vacancy, Section 12 also addresses the procedure for a tie vote. Attachment 1 contains an alternative method to resolve a tie vote (see box entitled “Alternate Provisions for Paragraph (2)”). The alternative is based on the provisions in the state Elections Code to resolve tie votes by random chance methods. Staff is requesting that Council provide direction as to which method should be incorporated into the draft ballot measure language.

### BACKGROUND

The Charter provisions for Mayor and Council vacancies were previously amended in 1949 and 1974. No updates have been made since then. The provisions are very complex and likely would result in a special election to fill the vacancy. Such an election would be very costly and there is a statutory precedent for enacting alternative procedures.

### RATIONALE FOR RECOMMENDATION

These amendments to the Charter will simplify the process for filling a vacancy in the office of Mayor or Councilmember, remove the outdated election deadlines, and allow the City to avoid calling a costly special election by filling vacancies at regular municipal elections.

### ALTERNATIVE ACTIONS CONSIDERED

Make no changes to the Charter at this time.

### CONTACT PERSON

Mark Numainville, City Clerk, 981-6900

### Attachments:

- 1: Proposed Vacancy Charter Provisions
- 2: Current Vacancy Charter Provisions

## New Language

### Section 12. Vacancy and Tie Vote in the Office of Mayor or Councilmember.

(1) If a vacancy occurs in the office of Mayor or Councilmember:

(a) An election shall be held at the next feasible general municipal election to elect a successor, as provided in subsection (b). In the interim, the remaining members of the City Council shall appoint a successor with requisite qualifications to fill the vacancy until such election. Such interim appointment shall be made only at a regular meeting of the City Council after notice has been given to the remaining members of the Council and the public by placement on the City Council agenda. The term of such appointed Mayor or Councilmember shall expire on November 30 of the year that an election is held to elect a successor, as provided in subsection (b).

(b) If the vacancy occurs within the first two years of the four year term of the office being vacated, and there is sufficient time to nominate and elect a successor at the next general municipal election, the vacancy shall be filled at said general election and the Mayor or Councilmember so elected shall serve the remaining two years of the term of the vacated office. If the vacancy occurs after the first two years of the four year term of the vacated office, the election for that office shall be held at the next general municipal election as required by this Charter.

(2) If at any municipal election a Mayor or the required number of Councilmembers be not elected by reason of a tie vote among any of the candidates therefor, then the Council, after the qualification of the persons, if any, elected thereto at such election, shall appoint one of the persons receiving such tie vote to fill such office. In such case the person so appointed shall hold office, subject to the provisions of the Recall, to and including the November 30th following the next general municipal election.

<b>Alternate Provisions for Paragraph (2) – Consistent with State Elections Code</b>
<p>(2) If at any municipal election a Mayor or Councilmember be not elected by reason of a tie vote among any of the candidates therefor, then the winner shall be chosen by lot. In such case the person so elected shall hold office, subject to the provisions of the Recall, for the full term of office.</p>

#### Section 12.1. Vacancy in office of Auditor.

If a vacancy shall occur in the office of Auditor, the Council shall appoint a person to fill such vacancy. If at any municipal election an Auditor be not elected by reason of a tie vote among any of the candidates therefor, then the Council, after the qualification of the persons, if any, elected thereto at such election, shall appoint one of the persons receiving such tie vote to fill such office as in the case of a vacancy therein. In such case the person so appointed shall hold office, subject to the provisions of the Recall, to and including the ~~June~~ November 30th following the next general municipal election.

#### Section 13. Vacancy in office of School Director.

If a vacancy shall occur in the office of School Director, the Board of Education shall appoint a person to fill such vacancy. If at any municipal election a School Director be not elected by reason of a tie vote among any of the candidates therefor, then the Board of Education, after the qualification of the persons, if any, elected thereto at such election, shall appoint one of the persons receiving such tie vote, to fill such office as in case of a vacancy therein. In each case the person so appointed shall hold office, subject to the provisions of the Recall, to and including the ~~April~~ November 30th following the next general municipal election.

**Current Charter Provisions:**

Section 12. Vacancy in Office of Mayor or Councilmember.

(1) If a vacancy shall occur in the office of Mayor or Councilmember:

(a) If the unexpired term is less than one year, the remaining members of the Council shall elect a successor with requisite qualifications to fill the vacancy for the unexpired term.

Vacancies shall be filled only at a regular meeting of the Council after reasonable notice of intent to fill the vacancy has been given to all remaining members of the Council by any Councilmember by placement on the agenda. Should the Council fail to fill any vacancy within 60 days after its occurrence, the Council shall, within 10 days, order a special municipal election, to be held not less than 60 nor more than 90 days after the date of the order; provided, however, if any regular statewide or general municipal election is to be held in the City not more than 180 days or less than 80 days from the date of the occurrence of the vacancy in the case of a regular statewide election, or not more than 180 days nor less than 60 days from the date of the occurrence of the vacancy in the case of a general municipal election, then the vacancy shall not be filled by the Council nor by special election, but at said regularly occurring election.

(b) If the unexpired term is for one year or more, the vacancy shall be filled by special election, to be called by the Council within ten days after the occurrence of the vacancy and to be held not less than 60 nor more than 90 days after the date of the order; provided, however, if any regular statewide or general municipal election is to be held in the City not more than 180 days nor less than 80 days from the date of the occurrence of the vacancy in the case of a regular statewide election, or not more than 180 days nor less than 60 days from the date of the occurrence of the vacancy in the case of a general municipal election, then the vacancy shall not be filled by special election, but at said regularly occurring election.

(2) If at any municipal election a Mayor or the required number of Councilmembers be not elected by reason of a tie vote among any of the candidates therefor, then the Council, after the qualification of the persons, if any, elected thereto at such election, shall appoint one of the persons receiving such tie vote to fill such office. In such case the person so appointed shall hold office, subject to the provisions of the Recall, to and including the April 30th following the next general municipal election.